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11 **UNITED STATES BANKRUPTCY COURT**  
12 **CENTRAL DISTRICT OF CALIFORNIA - SANTA ANA DIVISION**

13 In re:

14 THE LITIGATION PRACTICE  
15 GROUP P.C.,

16 Debtor.

Case No. 8:23-bk-10571-SC

Chapter 11

Adv. Proc. No. \_\_\_\_\_

17 **COMPLAINT FOR:**

18 **(1) AVOIDANCE, RECOVERY, AND**  
19 **PRESERVATION OF 2-YEAR**  
20 **ACTUAL FRAUDULENT**  
21 **TRANSFERS;**

22 **(2) AVOIDANCE, RECOVERY, AND**  
23 **PRESERVATION OF 4-YEAR**  
24 **ACTUAL FRAUDULENT**  
25 **TRANSFERS;**

26 **(3) AVOIDANCE, RECOVERY, AND**  
27 **PRESERVATION OF 2-YEAR**  
28 **CONSTRUCTIVE FRAUDULENT**  
**TRANSFERS;**

**(4) AVOIDANCE, RECOVERY, AND**  
**PRESERVATION OF 4-YEAR**  
**CONSTRUCTIVE FRAUDULENT**  
**TRANSFERS;**

**(5) AVOIDANCE, RECOVERY AND**  
**PRESERVATION OF**

22 RICHARD A. MARSHACK,  
23 Chapter 11 Trustee,

24 Plaintiff,

25 v.

26 CRI SYSTEM, INC.,  
27 a Nevada Corporation

28 Defendant.

**PREFERENTIAL TRANSFER MADE  
WITHIN NINETY DAYS OF THE  
PETITION DATE; AND**

**(6) TURNOVER**

Date: [To Be Set]  
Time: [To Be Set]  
Place: Courtroom 5C  
411 West Fourth Street  
Santa Ana, California 92701  
Judge: Hon. Scott C. Clarkson

For his *Complaint for (1) Avoidance, Recovery, and Preservation of 2-Year Actual Fraudulent Transfers; (2) Avoidance, Recovery, and Preservation of 4-Year Actual Fraudulent Transfers; (3) Avoidance, Recovery, and Preservation of 2-Year Constructive Fraudulent Transfers; (4) Avoidance, Recovery, and Preservation of 4-Year Constructive Fraudulent Transfers; (5) Avoidance, Recovery, and Preservation of Preferential Transfer; and (6) Turnover* (“Complaint”), plaintiff Richard A. Marshack, the Chapter 11 Trustee (“Trustee” or “Plaintiff”) for the bankruptcy estate (“Estate”) of debtor The Litigation Practice Group P.C. (“Debtor” or “LPG”) in the above-captioned bankruptcy case (“Bankruptcy Case”), alleges and avers as follows:

**STATEMENT OF JURISDICTION, NATURE OF PROCEEDING, AND  
VENUE**

1. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 157(b)(2)(A), (E), (H) and (O), 1334(b), and General Order No. 13-05 of the District Court for the Central District of California because this is a core proceeding arising in and/or related to the Bankruptcy Case, which is a case under Chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”), and which is pending in the United States Bankruptcy Court for the Central District of California, Santa Ana Division (“Bankruptcy Court”).

2. Regardless of whether this proceeding is core, non-core, or otherwise, Plaintiff consents to the entry of a final order and judgment by the Bankruptcy Court.



1 *Alternative Convert This Case to Chapter 7 or Appoint a Trustee* [Bankr. Docket No.  
2 44]. On May 4, 2023, the Court entered its *Order Directing United States Trustee to*  
3 *Appoint Chapter 11 Trustee* [Bankr. Docket No. 58].

4 11. Pursuant to the *Acceptance of Appointment as Chapter 11 Trustee*  
5 [Bankr. Docket No. 63], on May 8, 2023, Trustee accepted his appointment as the  
6 Chapter 11 Trustee in the Bankruptcy Case, and he continues to serve in this capacity  
7 at this time. The Court approved the Trustee's appointment in its *Order Approving*  
8 *the U.S. Trustee's Application for the Appointment of a Chapter 11 Trustee* [Docket  
9 No. 65].

10 12. Trustee was not appointed until after events of the case and, therefore,  
11 bases these allegations on information and belief. *Soo Park v. Thompson*, 851 F.3d  
12 910, 928 (9th Cir. 2017) ("The *Twombly* plausibility standard . . . does not prevent a  
13 plaintiff from pleading facts alleged upon information and belief where the facts are  
14 peculiarly within the possession and control of the defendant or where the belief is  
15 based on factual information that makes the inference of culpability  
16 plausible."); *Miller v. City of Los Angeles*, 2014 U.S. Dist. LEXIS 198871, 2014 WL  
17 12610195, at \*5 (C.D. Cal. Aug. 7, 2014) (recognizing that the plaintiff's "information  
18 and belief" pleading was allowed and "necessary at times"); *see also Mireskandari v.*  
19 *Daily Mail and General Trust PLC*, 2013 U.S. Dist. LEXIS 194437, 2013 WL  
20 12129642, at \*4 (C.D. Cal. July 31, 2013) ("The Federal Rules of Civil Procedure  
21 allow parties to plead facts on 'information and belief' if the facts 'will likely have  
22 evidentiary support after a reasonable opportunity for further investigation or  
23 discovery.'" (citations omitted)).

24 13. Plaintiff brings this action solely in his capacity as the Chapter 11 Trustee  
25 for the benefit of Debtor's Estate and its creditors.

26 **B. LPG**

27 14. LPG operated a law firm for consumers across the country who sought  
28 assistance in contesting or resolving debts they would identify.

1           15. The consumers would pay LPG over a period of time via monthly debits  
2 from their bank accounts.

3           16. The monthly payments were meant to cover all legal services LPG  
4 provided to the consumers including validation of the debts, review of documents to  
5 determine enforceability, and court appearances to halt lawsuits to obtain judgments.

6           17. In certain instances, LPG would file a lawsuit in an effort to eliminate a  
7 disputed debt or to prosecute affirmative claims held by the consumers.

8           18. LPG mismanaged the consumers' monthly payments.

9           19. To obtain consumer clients, LPG contracted with marketing companies,  
10 who engaged in illegal capping.

11           20. The marketing companies would advertise to or call to solicit them to  
12 become clients of LPG.

13           21. The marketing affiliate went so far as to assist with the execution of an  
14 engagement letter between the consumer and LPG.

15           22. In exchange, LPG agreed to pay the marketing affiliates a percentage of  
16 the monthly payments collected by LPG from the consumers.

17           23. Because LPG received payments from consumers over time, it often  
18 sought financing by borrowing against its future cash flows. This borrowing was not  
19 only used to finance operations at LPG, but also to pay the fees owed to the marketing  
20 companies for providing the client referrals.

21           24. Many of the documents executed in connection with such financing  
22 described the transactions as account receivable purchase agreements.

23           **C. Defendant**

24           25. Plaintiff has reason to believe Defendant was one of the marketing  
25 companies that procured clients for LPG. For example, LPG sent Defendant at least  
26 \$359,039.43, often in weekly disbursements, which is consistent with conduct LPG  
27 engaged in with other defendants with whom it had explicit capping agreements. LPG  
28 and Defendant also drafted an Accounts Receivable Purchase Agreement ("ARPA").

1 The drafted ARPA, though never executed, is also consistent with LPG's practices  
2 with other defendants with whom LPG had express capping agreements. A true and  
3 correct copy of the Void ARPA is included as **Exhibit 1**.

4 26. Based on the similarity of conduct between LPG and other defendants in  
5 this litigation, Trustee believes LPG agreed to pay, and in fact paid, Defendant a  
6 portion of the monthly payments received from consumers referred by Defendant.

7 **i. Affiliate Agreement**

8 27. As noted above, based upon the Trustee's review of the banking  
9 transactions between the Defendant and Debtor, Trustee believes that Debtor entered  
10 into an affiliate agreement with Defendant ("Affiliate Agreement"). A true and  
11 accurate copy of a summary of the banking transaction history is attached hereto as  
12 **Exhibit 2** and incorporated here ("Transaction History").

13 28. Based upon the Trustee's review of the Transaction History, Defendant  
14 likely generated leads consisting of consumers interested in the legal services offered  
15 by LPG and referred those consumers to Debtor. For example, the notes from the  
16 transaction that took place on November 23, 2022 notes, "Lead Generation Tm". See  
17 **Exhibit 2**.

18 29. The Affiliate Agreement violates Sections 6151 and 6155 of the  
19 California Business and Professional Code, which prohibit referrals of potential  
20 clients to attorneys unless registered with the State Bar of California. CAL. BUS. &  
21 PROF. CODE § 6155. "Referral activity" includes "any entity 'which, in person,  
22 electronically, or otherwise, refers the consumer to an attorney or law firm not  
23 identified' in the advertising." *Jackson v. LegalMatch.com*, 42 Cal. App. 5th 760, 775  
24 (2019). A referral includes receiving information from potential clients and sending  
25 that information to lawyers, even when the advertiser does not advertise the name of  
26 the attorneys and the clients do not clear the name of the potential attorney after the  
27 referral occurred.

28 ///

1           30. Further, if any effect of an agreement is to accomplish an unlawful  
2 purpose, the agreement may be declared illegal regardless of the intention of the  
3 parties. *Stockton Morris Plan Co. v. Cal. Tractor & Equip. Corp.*, 112 Cal. App. 2d  
4 684, 690 (1952) (citing *Fewel & Dawes, Inc. v. Pratt*, 17 Cal. 2d 85, 91 (1941)). This  
5 remains true regardless of whether the contract has been performed. *Stevens v. Boyes*  
6 *Hot Springs Co.*, 113 Cal. App. 479 (1931) (A contract by a corporation to purchase  
7 its own stock has the effect of illegally withdrawing and paying to a stockholder a  
8 part of the capital stock of the corporation and is illegal and void, regardless of the  
9 fact that the contract is fully performed by the sellers and partially performed by the  
10 corporation.); *Mansfield v. Hyde*, 112 Cal. App. 2d 133 (1952), overruled, *Fomco,*  
11 *Inc. v. Joe Maggio, Inc.*, 8 Cal. Rptr. 459 (1960) (Where object of statute requiring  
12 licenses is to prevent improper persons from engaging in particular activity, or is for  
13 purpose of regulating occupation or business for protection of public, imposition of  
14 penalty amounts to prohibition against engaging in occupation or business without  
15 license, and contract made by unlicensed person in violation of statute is  
16 invalid.); *Firpo v. Murphy*, 72 Cal. App. 249 (1925) (A contract to pay commissions  
17 to a real estate broker is illegal and he is not entitled to recover thereon where he fails  
18 to secure the license required by law to carry on his business.).

19           31. Because the Affiliate Agreement violates federal and state law, it is void,  
20 unenforceable, and subject to avoidance as fraudulent.

21           **D. Payments to Defendant**

22           32. As noted above, the Transaction History indicates that during the  
23 applicable reach-back periods for fraudulent and preferential conveyances, Debtor  
24 paid Defendant the sum of *at least* \$359,039.43 between November of 2022 and  
25 February of 2023 subject to proof at trial (the “Transfers”). See **Exhibit 2**).

26           33. Included in the Transfers above is the sum of *at least* \$129,241.64, which  
27 is made up of transfers of funds from Debtor to Defendant within the 90-day  
28

1 preference period provided by 11 U.S.C. §547 (the “Preference Transfers”). A true  
2 and correct list of the Preference Transfers is attached hereto as **Exhibit 3**.

3 **E. The Preference Letter**

4 34. On or about September 15, 2023, the Trustee sent a letter to Defendant  
5 (the “Preference Letter”) alerting it to the possibility of litigation based on probable  
6 preferential transfers from Debtor to Defendant in the amount of \$114,241.64<sup>1</sup>  
7 (“Preference Transfers”) during the 90-days prior to the petition date. Additionally,  
8 the Preference Letter sought to avoid litigation by offering Defendant opportunity to  
9 present exculpatory documentation or affirmative defenses, while also including  
10 offering settlement terms. A true and accurate copy of the Preference Letter is  
11 attached hereto as **Exhibit 4**. To date, Trustee has not received a response to the  
12 Preference Letter.

13 **F. LPG’s Prepetition Creditors**

14 35. Debtor was insolvent when each Transfer was made. This insolvency is  
15 evidenced in part by the fact that 14 separate UCC-1 statements were of record  
16 securing debts of the Debtor as of September 1, 2022. These statements remained  
17 unreleased as of the Petition Date. These statements either reflected secured liens  
18 against the Debtor’s assets then owned or thereafter acquired, or provided evidence  
19 of the assignment or sale of substantial portions of the Debtor’s future income.

20 36. When the Transfers were made, these prior UCC-1 statements secured  
21 the repayment of the following claimed amounts that are currently known to Trustee  
22 and are allegedly owed by the Debtor: (i) \$2,374,004.82 owed to Fundura Capital  
23 Group as evidenced by Proof of Claim No. 335 purportedly secured by a UCC  
24 statement filed on or about May 19, 2021; (ii) approximately \$15 million dollars owed  
25 to MNS Funding, LLC as evidenced by Proof of Claim No. 1060 purportedly secured  
26

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27 <sup>1</sup> The Preference Letter erroneously stated the amount of the Preference Transfers as \$114,241.64.  
28 In fact, the chart included with the Preference Letter noting all suspected preferential transfers  
totals **\$129,241.64**.



1 by a UCC statement filed on or about May 28, 2021; (iii) approximately \$5,000,000  
2 owed to Azzure Capital, LLC as evidenced by Proof of Claim No. 127 secured by a  
3 UCC statement filed on or about May 28, 2021; and (iv) approximately \$1.5 million  
4 dollars owed to Diverse Capital, LLC purportedly secured by UCC statements filed  
5 on or about September 15, 2021, and December 1, 2021.<sup>[1]</sup>

6 37. As alleged above, LPG was borrowing against its assets and future  
7 income, often on unfavorable terms, not only to finance operations at LPG, but also  
8 to pay the fees owed to the marketing affiliates for providing it with consumer clients.  
9 Pursuant to the agreements with the marketing companies, significant percentages of  
10 future payments were already promised to be paid to the marketing affiliates from  
11 whatever future income the Debtor would receive.

12 38. In addition, on Debtor's Schedule E/F [Bankr. Docket No. 33], Debtor  
13 scheduled 11 unsecured creditors with priority unsecured claims totaling  
14 \$374,060.04. These priority unsecured creditors include Indiana Dept. of Revenue,  
15 Dept. of Labor and Industries, Arizona Dept. of Economic Security, Arkansas Dept.  
16 of Finance & Admin., California Franchise Tax Board, Georgia Dept. of Labor,  
17 Internal Revenue Service, Mississippi Dept. of Revenue, Nevada Dept. of Taxation,  
18 Utah State Tax Commission, and Wisconsin Dept. of Revenue (collectively, "Priority  
19 Unsecured Creditors").

20 39. Another group of creditors that Debtor listed on its Schedule E/F [Bankr.  
21 Docket No. 33] are nonpriority unsecured creditors. Those 58 creditors have  
22 scheduled claims totaling \$141,439,158.05 and include Ajilon; Anthem Blue Cross;  
23 Azevedo Solutions Groups, Inc.; Carolina Technologies & Consulting Invoice;  
24 Collaboration Advisors; Credit Reporting Service Inc.; CT Corporation – Inv.; Debt  
25 Pay Pro; Document Fulfillment Services; EnergyCare, LLC; Exela Enterprise  
26 Solutions; First Legal Network, LLC; GHA Technologies Inc.; Harrington Electric,

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27  
28 <sup>[1]</sup> Trustee reserves all rights, claims, and defenses with respect to these and any other purported  
secured or unsecured claims.

1 Inc.; Imagine Reporting; Juize, Inc.; Krisp Technologies, Inc.; Liberty Mutual; Marc  
2 Lemauiel – Allegra; MarkSYS Holdings, LLC; Netsuite-Oracle; Pitney Bowes;  
3 Rapid Credit, Inc.; SBS Leasing A Program of De Lage Landen; Security Solutions;  
4 Sharp Business Systems; Streamline Performance, Inc.; Thomson Reuters; Twilio,  
5 Inc.; Nationwide Appearance Attorneys; Executive Center, LLC; Outsource  
6 Accelerator, Ltd.; TaskUs Holdings, Inc.; Marich Bein, LLC; Validation Partners;  
7 MC DVI Fund 1, LLC; MC DVI Fund 2, LLC; Debt Validation Fund II, LLC; Tustin  
8 Executive Center; LexisNexus; JP Morgan Chase; Business Centers of America;  
9 Michael Schwartz; Anibal Colon Jr.; Kathleen Lacey; David Ulery; Kimberly  
10 Birdsong; Kevin Carpenter; Karen Suell; Gloria Eaton; Carolyn Beech; Debra Price;  
11 Kenneth Topp; Darcey Williamson, Trustee; James Hammett; Johnny Rizo; Beverly  
12 Graham; Kathleen Scarlett; and Geneve and Myranda Sheffield (collectively,  
13 “Nonpriority Unsecured Creditors” and, together with the Secured Creditors and  
14 Priority Unsecured Creditors, “Prepetition Creditors”).

15 **FIRST CLAIM FOR RELIEF**

16 **Count I - Avoidance, Recovery, and Preservation of Actual Fraudulent**  
17 **Transfers**

18 **[11 U.S.C. §§ 548(a)(1)(A), 550, and 551]**

19 40. Plaintiff realleges and incorporates here by reference each and every  
20 allegation contained in paragraphs 1 through 39 as though set forth in full.

21 41. The Affiliate Agreement, which, as noted above, Trustee has reason to  
22 believe existed, and all of the currently known Transfers occurred within the two  
23 years prior to the Petition Date subject to proof at trial.

24 42. On or after the date that such agreement was executed and the Transfers  
25 were made, entities to which Debtor was or became indebted include the Prepetition  
26 Creditors.

27 43. The Transfers happened while Debtor was insolvent or rendered Debtor  
28 insolvent.

1        44. Despite Debtor's obligation to the Prepetition Creditors, Debtor  
2 continued to pay Defendant sums received from consumers under the Affiliate  
3 Agreement, which constitutes an illegal capping agreement between Defendant and  
4 Debtor. Any obligation of the Debtor arising from such agreement is also avoidable  
5 as fraudulent.

6        45. Despite Debtor's obligation to the Prepetition Creditors, Debtor  
7 continued to sell or transfer portions of its accounts receivable to Defendant, which  
8 is illegal under federal and state laws.

9        46. Because the referrals from Defendant to Debtor are illegal under federal  
10 and state laws, they are void. Moreover, any purported consideration constitutes  
11 unlawful consideration, which cannot constitute reasonably equivalent value. Thus,  
12 at the time the agreements were executed and the Transfers made, Debtor received  
13 less than reasonably equivalent value.

14        47. The Transfers were made with actual intent to hinder, delay, or defraud  
15 creditors of Debtor.

16        48. The Affiliate Agreement and Transfers should be avoided as fraudulent  
17 under 11 U.S.C. § 548(a)(1)(A), and such transferred property, or the value thereof,  
18 should be recovered and preserved for the benefit of the Estate pursuant to 11 U.S.C.  
19 §§ 550 and 551.

20                                    **SECOND CLAIM FOR RELIEF**

21            **Avoidance, Recovery, and Preservation of Actual Fraudulent Transfers**  
22                                    **Against Defendant**

23    **[11 U.S.C. §§ 544(b), 550, and 551; CAL. CIV. CODE §§ 3439.04(a) and 3439.07]**

24        49. Plaintiff realleges and incorporates here by reference each and every  
25 allegation contained in paragraphs 1 through 48 as though set forth in full.

26        50. The Affiliate Agreement, which, as noted above, Trustee has reason to  
27 believe existed, and all of the currently known Transfers occurred within the four  
28 years prior to the Petition Date subject to proof at trial.

1           51. On or after the date that such agreement was executed and the Transfers  
2 were made, entities to which Debtor was or became indebted include the Prepetition  
3 Creditors.

4           52. Despite Debtor's obligation to the Prepetition Creditors, Debtor  
5 continued to pay Defendant sums received from consumers under the Affiliate  
6 Agreement, which constitutes an illegal capping agreement between Defendant and  
7 Debtor.

8           53. Because the referrals from Defendant to Debtor are illegal under federal  
9 and state law, they are void and subject to avoidance as fraudulent. Any purported  
10 consideration constitutes unlawful consideration, which cannot constitute reasonably  
11 equivalent value. Thus, at the time the agreements were executed and the Transfers  
12 made, Debtor received less than reasonably equivalent value.

13           54. Despite Debtor's obligation to the Prepetition Creditors, Debtor  
14 continued to sell its accounts receivable to Defendant, which is illegal under federal  
15 and state laws. Because they are illegal under federal and state laws, they are void  
16 and subject to avoidance as fraudulent. Any purported consideration constitutes  
17 unlawful consideration, which cannot constitute reasonably equivalent value. Thus,  
18 at the time the agreement was executed and the Transfers made, Debtor received less  
19 than reasonably equivalent value.

20           55. The Affiliate Agreement and the Transfers of Debtor's funds are  
21 avoidable as fraudulent pursuant to 11 U.S.C. § 544(b) and CAL. CIV. CODE §§  
22 3439.04(a) and 3439.07 by one or more creditors who held and hold unsecured claims  
23 against Debtor that were and are allowable against his Estate under 11 U.S.C. § 502  
24 or that were not and are not allowable only under 11 U.S.C. § 502(e), including,  
25 without limitation, the Prepetition Creditors.

26           56. Accordingly, the Affiliate Agreement and the Transfers should be  
27 avoided as fraudulent under 11 U.S.C. §§ 544(b) and CAL. CIV. CODE §§ 3439.04(a)  
28 and 3439.07, and such property, or the value thereof, should be recovered and

1 preserved for the benefit of the Estate pursuant to 11 U.S.C. §§ 550 and 551 and CAL.  
2 CIV. CODE § 3439.07.

3 **THIRD CLAIM FOR RELIEF**

4 **Avoidance, Recovery, and Preservation of Constructive Fraudulent Transfers**  
5 **Against Defendant**

6 **[11 U.S.C. §§ 548(a)(1)(B), 550, and 551]**

7 57. Plaintiff realleges and incorporates here by reference each and every  
8 allegation contained in paragraphs 1 through 56 as though set forth in full.

9 58. The Affiliate Agreement, which, as noted above, Trustee has reason to  
10 believe existed, and all of the currently known Transfers occurred within the two  
11 years prior to the Petition Date. However, as Trustee is likely not in possession of  
12 all relevant documentation between Debtor and Defendant, it is possible that  
13 additional transfers will be discovered.

14 59. On or after the date that such agreement was entered and the Transfers  
15 were made, entities to which Debtor was or became indebted include the Prepetition  
16 Creditors.

17 60. The Transfers happened while Debtor:

- 18 a. was insolvent or became insolvent as a result;  
19 b. was engaged or was about to engage in a transaction for which any  
20 property remaining with Debtor was of unreasonably small capital;  
21 or  
22 c. intended to incur, or believed that it would incur, debts beyond its  
23 ability to pay as such debts matured.

24 61. Because the referrals from Defendant to Debtor are illegal under  
25 federal and state law, they are void and subject to avoidance as fraudulent. Any  
26 purported consideration constitutes unlawful consideration, which cannot constitute  
27 reasonably equivalent value. Thus, at the time the agreements were executed and the  
28 Transfers made, Debtor received less than reasonably equivalent value.

62. The Affiliate Agreement and the Transfers should be avoided as fraudulent under 11 U.S.C. § 548(a)(1)(B), and such transferred property, or the value thereof, should be recovered and preserved for the benefit of the Estate pursuant to 11 U.S.C. §§ 550 and 551.

#### **FOURTH CLAIM FOR RELIEF**

#### **Avoidance, Recovery, and Preservation of Constructive Fraudulent Transfers Against Defendant**

**[11 U.S.C. §§ 544(b), 550, and 551; CAL. CIV. CODE §§ 3439.05, and 3439.07]**

63. Plaintiff realleges and incorporates here by reference each and every allegation contained in paragraphs 1 through 62 as though set forth in full.

64. The Affiliate Agreement, which, as noted above, Trustee has reason to believe existed, and at least all of the currently known Transfers occurred within the four years prior to the Petition Date subject to proof at trial.

65. The Transfers happened while Debtor:

- a. was insolvent or became insolvent as a result;
- b. was engaged or was about to engage in a transaction for which any property remaining with Debtor was of unreasonably small capital;  
or
- c. intended to incur, or believed that it would incur, debts beyond its ability to pay as such debts matured.

66. Because the referrals from Defendant to Debtor are illegal under federal and state law, the agreement is void and subject to avoidance as fraudulent. Any purported consideration constitutes unlawful consideration, which cannot constitute reasonably equivalent value. Thus, at the time the agreement was executed and the Transfers made, Debtor received less than reasonably equivalent value.

67. The Affiliate Agreement and the Transfers of Debtor's funds are avoidable as fraudulent pursuant to 11 U.S.C. § 544(b) and CAL. CIV. CODE §§ 3439.05 and 3439.07 by one or more creditors who held and hold unsecured claims

1 against Debtor that were and are allowable against his Estate under 11 U.S.C. § 502  
2 or that were not and are not allowable only under 11 U.S.C. § 502(e), including,  
3 without limitation, the Prepetition Creditors.

4 68. Accordingly, the Affiliate Agreement and the Transfers should be  
5 avoided as fraudulent under 11 U.S.C. §§ 544(b) and CAL. CIV. CODE §§ 3439.05 and  
6 3439.07, and such transferred property, or the value thereof, should be recovered and  
7 preserved for the benefit of the Estate pursuant to 11 U.S.C. §§ 550 and 551 and CAL.  
8 CIV. CODE § 3439.07.

9 **FIFTH CLAIM FOR RELIEF**

10 **Avoidance, Recovery, and Preservation of Preferential Transfer to Defendant**  
11 **in Preference Period**

12 **[11 U.S.C. §§ 547, 550, and 551]**

13 69. Plaintiff realleges and incorporates here by reference each and every  
14 allegation contained in paragraphs 1 through 68 as though set forth in full.

15 70. The currently known Preference Transfers occurred during the 90-day  
16 preference period provided by 11 U.S.C. §547 subject to proof at trial.

17 71. The Preference Transfers were made for, or on account of, an antecedent  
18 debt or debts owed by LPG to Defendant, each of which constituted a “debt” or  
19 “claim” (as those terms are defined in the Bankruptcy Code) of Defendant.

20 72. The Preference Transfers happened while LPG was insolvent.

21 73. Debtor is also entitled to the presumption of insolvency when the  
22 Preference Transfers happened pursuant to 11 U.S.C. § 547(f).

23 74. As a result of the Preference Transfers, Defendant recovered more than  
24 it would have received if: (i) the Debtor’s case was under chapter 7 of the Bankruptcy  
25 Code; (ii) the Preference Transfers had not been made; and (iii) Defendant received  
26 payments of its debts under the provisions of the Bankruptcy Code. As evidenced by  
27 the Debtor’s schedules filed in the underlying Bankruptcy Case, as well as the proofs  
28 of claim that have been received to date, the Debtor’s liabilities exceed its assets to

1 the point that unsecured creditors will not receive a full payout of their claims from  
2 the Debtor's Estate.

3 75. In accordance with the foregoing, the Preference Transfers are avoidable  
4 pursuant to 11 U.S.C. § 547(b), and may be recovered and preserved for the benefit  
5 of the estate pursuant to 11 U.S.C. §§ 550 and 551.

6 **SIXTH CLAIM FOR RELIEF**

7 **Turnover of Estate Property Against Defendant**

8 **[11 U.S.C. § 542]**

9 76. Plaintiff realleges and incorporates herein by reference each and every  
10 allegation contained in paragraphs 1 through 75 as though set forth in full.

11 77. Defendant has possession or control over property of the Estate in the  
12 form of the Transfers made pursuant to illegal and unenforceable agreements.

13 78. The Transfers are not of inconsequential value to the Estate.

14 79. The funds that are the subject of the Transfers are paramount to Debtor's  
15 ability to pay creditors.

16 80. Accordingly, Trustee is entitled to a judgment for turnover of the  
17 Transfer funds pursuant to 11 U.S.C. § 542.

18 **RESERVATION OF RIGHTS**

19 81. Plaintiff reserves the right to bring all other claims or causes of action  
20 that Plaintiff may have against Defendant, on any and all grounds, as allowed under  
21 the law or in equity, including but not limited to, those claims not known by the  
22 Trustee at this time but that he may discover during the pendency of this adversary  
23 proceeding.

24 **PRAYER FOR RELIEF**

25 **WHEREFORE**, Plaintiff prays for a judgment as follows:

26 **On The First, Second, Third, and Fourth Claims for Relief:**

27 1. Avoiding, recovering, and preserving the Transfers against  
28 Defendant according to proof at time of trial;



**On the Fifth Claim for Relief:**

2. Avoiding, recovering, and preserving the Preference Transfers  
against Defendant according to proof at time of trial;

**On the Sixth Claim for Relief:**

3. Ordering Defendant to immediately turn over the Transfers and/or  
Preference Transfers;

**On All Claims for Relief:**

4. Awarding costs of suit incurred here; and

5. Granting any other and further relief as the Court deems just and  
proper.

Dated: February 9, 2024

Respectfully submitted,

DINSMORE & SHOHL LLP

By: /s/ Jacob R. Bothamley

Yosina M. Lissebeck

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*Special Counsel to Richard A.  
Marshack, Chapter 11 Trustee*